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November 28, 2007

BY FACSIMILE & ECF

Honorable Theodore H. Katz
United States Magistrate Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street; Room 1660
New York, New York 10007-1312

Re: Wausau Underwriters Ins. Co., et al., v. QBE Insurance Corp., et al.
Civil Action No. 06 CV 3212 (VM) (THK)
Our File No. 111059

Dear Judge Katz:

This firm represents Defendant Scottsdale Insurance Company (“Scottsdale”) in the referenced matter. I write in response to the letters of William Bave, Esq., counsel for defendant QBE Insurance Corp. (“QBE”), and Marshall Potashner, Esq., counsel for Plaintiffs.¹

Scottsdale does not take a position on the issue of whether Judge Marrero, in his July 26, 2007 decision on Plaintiffs’ motion for partial summary judgment against QBE, implicitly or explicitly decided the issue of priority of coverage between the QBE policy and either Plaintiff’s policy.

Scottsdale does, however, oppose QBE’s request for leave to bring a motion seeking contribution from Scottsdale, as being premature. Among other reasons, any obligation on the part of Scottsdale to contribute to QBE’s indemnity obligation to Plaintiffs would not accrue unless and until Scottsdale’s insured were found to have some liability for the injuries alleged in the underlying action. Further, as alluded to in Mr. Bave’s letter, the Scottsdale policy provides primary coverage to additional insureds only under a certain condition, *i.e.*, a finding that the underlying damages claimed result from the named insured’s sole negligence. It is indisputable that that finding has not been made.

¹ Please accept my apologies for the delay in responding to that correspondence. I have just returned to work from attending to a death in my family.

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Honorable Theodore H. Katz

Thank you for your attention to this matter.

Very truly yours,



Andrew J. Mihalick

cc: William H. Bave, Esq.
Marshall T. Potashner, Esq.